

*Isaac Bess*

*Bernie*

*Victor*

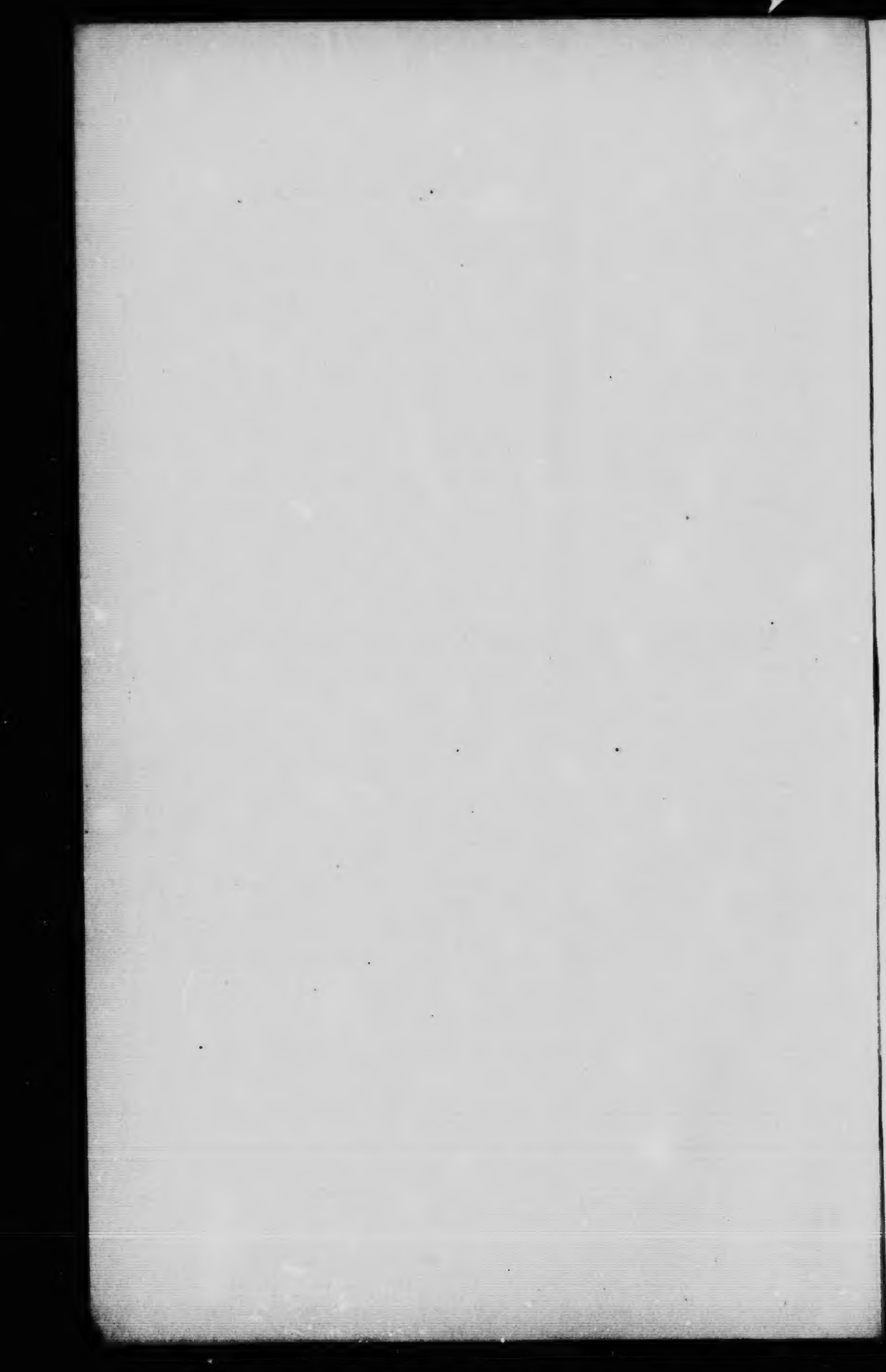
## THE "FAVOURITE"

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**ARBITRATION OF OUTSTANDING PECUNIARY  
CLAIMS. BETWEEN GREAT BRITAIN AND  
THE UNITED STATES OF AMERICA.**

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**THE "FAVOURITE"**

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**MEMORIAL OF HIS BRITANNIC MAJESTY'S  
GOVERNMENT IN SUPPORT OF  
THE CLAIM.**

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**VANCOUVER, CANADA  
WESTERN SPECIALTY, LIMITED, PRINTERS  
1913**

NW  
998.1  
P3694

D. B. Davis  
#2.90

Jul. 1 '88

**ARBITRATION OF OUTSTANDING PECUNIARY  
CLAIMS BETWEEN GREAT BRITAIN AND  
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**THE "FAVOURITE"**

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**MEMORIAL OF HIS BRITANNIC MAJESTY'S  
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THE CLAIM.**

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THIS is a claim for \$19,443.28 together with interest from November 30th, 1894, to the time of payment at Seven (7) per cent.

1. The "Favourite" was a British schooner registered at the Port of Victoria on the 18th day of June, 1868, her official number being 61302. She was owned by Laughlin McLean, who was the Master thereof. Laughlin McLean is a British subject, born in the year 1854 at Little Sands in the Province of Prince Edward Island, and was the son of one Angus McLean. Angus McLean and his wife were born in Prince Edward Island.

2. R. P. Rithet & Co., Limited Liability, is and was a body incorporated under the laws of British Columbia 3rd January, 1891, and were managers of the said schooner.

3. By the award of the Tribunal of Arbitration constituted under the treaty of the 29th of February, 1892, between Her Britannic Majesty and the United States of America, certain regulations were prescribed governing the hunting of fur seals in that part of Behring Sea referred to in the said regulations.

4. The said regulations among other things provided as follows:—

(a) That a close season should be established over the waters in question extending from the 1st day of May to the 31st day of July in each year.

(b) That every vessel authorized to fish for fur seals should be provided with a special license issued for that purpose by its government.

(c) That the seals should be captured by means of spears, the use of nets, fire arms and explosives being expressly prohibited.

5. The Imperial Statute entitled the "Behring Sea Award Act, 1894," gave the said regulations the force of law throughout Her Majesty's dominions, and provided for the enforcement thereof. The Act also provided that Orders in Council might be enacted for the purpose of carrying the said regulations into effect.

6. In pursuance of the said Act, Imperial Orders in Council were duly passed providing that such licenses might be issued to qualified vessels by the Collector of Customs at the Port of Victoria, British Columbia, and prescribing the conditions governing the application for, and the form in which the said licenses should be issued.

7. In order to provide further for the convenient application of the said regulations, an arrangement was entered into in the year 1894, between Her Majesty's Government and the Government of the United States, which among other things, provided as follows:—

(I) No sealing vessel shall be seized or detained by reason of the absence of a license or of a distinctive flag or merely on account of seals, seal skins or fishery implements being found on board; but, unless there be evidence of unlawful sealing, the commander of the cruiser visiting such vessel shall deliver to the master a certificate of the number of seals and seal skins found on board on that date (keeping a copy of such certificate) and allow the vessel to proceed on her way.

(II) Any sealing vessel lawfully traversing or intending to traverse the said waters during the close season for the purpose of returning to her home port, or of proceeding to any other port, or to or from the sealing grounds, or for other legitimate purpose, may, on the application of the master have



her fishery implements sealed up, and an entry thereof made on her clearance or log book, and such sealing up and entry shall be a protection to the vessel against interference by any cruiser in the said waters, during the close season, so long as the seals so affixed shall remain unbroken, unless there shall be evidence of seal hunting notwithstanding.

(III) The sealing up of fishery implements and the entry thereof may be effected by any naval officer or customs officer, or (in Japan) by any consul of any nation to which the vessel belongs. It may also be effected at sea as regards U. S. vessels by the commander of a British cruiser, and as regards British vessels by the commander of a U. S. cruiser. ##

8. In the year 1894 the said R. P. Rithet & Co., Limited Liability, as Managing Agents, determined to fit the said "Favourite" out for a sealing voyage.

9. Laughlin McLean as Master of the said vessel, procured from the Collector of Customs at Victoria aforesaid a Special Sealing License Number 5, dated June 16, 1894, to hunt for seals in Behring Sea, and sailed from Victoria on the 18th June, 1894.

10. The crew of said vessel consisted of Laughlin McLean, master; Owen Thomas, N. P. Neelson, William Hughes, Louis Millet, Charles Kaulback, H. Milway, E. McDonald and George McDonald.

11. At the time said vessel sailed she had no guns or firearms on board except a gun constructed as follows: The barrels of an old double-barrel shotgun were cut to a length of about eleven inches and roughly fixed to a pistol-handle grip of nine inches. The said gun was intended for, and was used only as a signal gun for firing rockets in order to indicate the position of the schooner to any sealing boats which might be at a distance from the schooner while in the hunting grounds. The fact of the said gun being on board was duly entered on the ship's manifest, before leaving Victoria.

12. The said schooner having left the port of Victoria proceeded to Kynuquot on the west coast of Vancouver Island for the purpose of shipping a crew of Indian hunters to hunt for seals in the Behring Sea with spears, in accordance with the regulations.

13. The said schooner arrived at Kynuquot on the 21st day of June, 1894, and procured a crew of 45 Indian hunters.

14. The sealing implements on board having been duly sealed up by Her Majesty's Customs Officer and an entry having been duly

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made thereof in the log book, the schooner, on the 4th day of July, 1894, set sail for Behring Sea.

15. The said schooner arrived at Akoun at the entrance to Behring Sea on the 28th day of July, 1894, and anchored in the bay off the said island.

16. On the morning of the 1st of August the said schooner entered the sea and after duly breaking seals of the implements aforesaid the master commenced sealing on that day, and continued until the 24th day of August, 1894, when he was boarded by an officer of the U. S. Revenue Cutter "Mohican" in longitude 168.30, latitude 54.27.

17. While the said officer was examining the said schooner's papers the said master placed on the table before him the signal gun mentioned in paragraph 11 of this memorial and after inspection and examination of the said schooner, her papers and contents, the said officer expressed himself as satisfied with everything and made the following entry in the schooner's official log and signed his name thereto, to-wit: "Boarded the 'Favourite.' Found log correctly kept. No violation of regulations, as per log, one shot gun unsealed." This entry was signed "Thos. J. Senn" "Boarding Officer." The said officer then left the schooner and returned to the said revenue cutter "Mohican."

18. The master of the said schooner then ordered the canoes to go hunting and the said "Mohican" steamed off about two miles and rounding to returned and the said officer of the said "Mohican," Thos. J. Senn, again boarded said schooner and ordered her master to call in all the canoes and take all the papers and signal gun of said schooner and come aboard the said "Mohican": and this order was obeyed.

19. The captain of the said "Mohican" then informed the master of the "Favourite" that the said schooner was under seizure for having on board the said signal gun before referred to, although the master protested and informed the said officer as the facts were that the said gun was utterly unfit for sealing purposes, that there were no cartridges of any kind on board and the said gun was intended and could only be used for firing rockets as aforesaid; and also pointed out to the said officer that the said gun appeared on the manifest of the schooner, signed by the Collector of Customs at Victoria, and that the said Collector would not have allowed it go unsealed, unless it had been known that it could not be used for hunting purposes. The signal gun can be produced if required.



20. The said schooner having been seized as aforesaid was sent in custody of a prize crew from said "Mohican" to Unalaska and ordered to report to Her Majesty's ship "Pheasant," which was stationed there, and was, by the commander of that ship, ordered to report to the Collector of Customs at Victoria, British Columbia.

21. In consequence of the said seizure and the orders which followed above referred to, the master of the said schooner "Favourite" left Behring Sea and sailed to the Port of Victoria, where he arrived on the 15th September, 1894.

22. After the arrival of the said schooner at Victoria, the facts were made known by the Collector of Customs to Rear-Admiral H. F. C. Stephenson, commanding Her Majesty's ship "Royal Arthur," then stationed at the Port of Esquimalt, British Columbia, and who was the officer designated by Her Majesty to prosecute for breaches of said regulations, and he, upon such report, ordered that the schooner "Favourite" should be released.

23. Neither by the Behring Sea Award or the regulations made therein or thereunder or any legislation or other legal or competent authority, was the Captain of the United States Ship "Mohican" justified or authorized to seize the "Favourite" by reason of her carrying the said signal gun or for any other existing cause, and it is charged that the said seizure was illegally and unjustifiably made.

24. In consequence of the said seizure, the Schooner "Favourite" lost the whole of the remaining portion of her sealing season.

25. The said Schooner was well equipped for hunting; she carried nineteen canoes with a crew of carefully selected hunters. Between the 1st day of August and the 24th day of August, the day of seizure, she had taken 1,247 skins, and a reasonable estimate of her catch, if she had not been interfered with as aforesaid, is a total of 3,589 skins, being 2,343 skins more than the number taken prior to the day of seizure.

26. The skins taken before the seizure was sold by said R. P. Rithet & Co., Limited, in London for the sum of \$8.62 per skin, though at the date of the declaration of the Master hereinafter referred to, in November, 1894, it was expected to realize the sum of \$10 per skin for said cargo. A copy of the accounts as rendered to said McLean are annexed.

27. In proof of the preceding statements of fact, there is set out in the Annexes to this Memorial a copy of a Notarial Declaration which was made by Laughlin McLean, Master of the said Schooner, on the 7th day of November, 1894, and which said Solemn Declaration was forwarded to the Department of Marine and Fisheries at Ottawa, in the Dominion of Canada, on the 3rd day of December, 1894, and was received and filed in the said Department on the 18th day of the same month, and there is also a Solemn Declaration of James Hill Lawson, declared on the 28th day of December, A. D. 1912.

28. In addition to the Statutory Declarations annexed to this Memorial, namely, the Statutory Declaration of John J. Whiteley, Daniel G. MacAulay, Isaac A. Gould, Spratt Balcom and Victor Jacobson, the following references are made:—

On the 30th of August, 1894, the Commander commanding United States Naval Forces in Behring Sea reported regarding the catch of fur seals in Behring Sea since the season opened August 1st, based upon information collected by three of his fleet to the effect that they operated 23 sealers and found 11,202 seals.—(53rd Congress, 3rd Session, Senate Executive Document Number 67, page 371.)

And F. J. Drake, Lieutenant Commander, reporting to Commander Clark, August 27th, 1894, reports the number of seals taken by 11 sealers whose catch he had examined, made an average catch of 18 seals a day, and he states: "Limiting the season's work to the middle of September, which I consider will be excessive, or 45 days from the 1st of August, will make the total catch 37 by 18 by 45 equal to 29,970 seals."—(53rd Congress, 3rd Session, Senate Executive Document Number 67, page 375.)

29. The Secretary of the Naval Department, September 26th, 1894, reports to the Secretary of State of the United States, stating that it appeared that the seals had that year proceeded in large numbers outside of zone of 60 miles around the Pribilof Island in search of food.—(53rd Congress, 3rd Session, Senate Executive Document Number 67, page 405.)

30. The Commander of the United States Navy commanding the United States Naval Forces in Behring Sea, on October 5th, 1894, reported as follows: "There was no disposition on the part of sealers to enter the prohibited zone surrounding the Pribilof

Islands, and there is not likely to be in the future, as the seals leaving the islands for food generally go beyond the 60-mile limit."—(53rd Congress, 3rd Session Senate, Executive Document Number 67, page 418.)

31. And the same officer, reporting October 27th, 1894, reported that the "Triumph" took on an average over 100 seals a day.—(53rd Congress, 3rd Session Senate, Executive Document Number 67, page 431.)

32. "Upward of 30,000 seals were captured this year in Behring Sea after the 31st of July, and of these nearly 25,000 were females. A careful estimate made early in September showed that 9,300 pups had already died of starvation on the rookeries, and that about an equal number would later perish in the same miserable manner, half of them being females. About 33,000 were lost, and the reproductive power of the herd has been lowered from 10 to 20 per cent. The success that has attended sealing this year, and the knowledge that has been obtained of methods that can be followed and of grounds that may be resorted to advantageously, will probably double the number of vessels engaged and increase the catch proportionately."—(53rd Congress, 3rd Session Senate, Executive Document Number 67, page 432.)

33. "An inspection of the chart will show where the greater number of seals were seen. If they did not know already, the sealers soon discovered that the locality most favorable to their work was that inclosed between the prohibited zone, the 54th parallel of latitude and lines drawn from the island of St. George through the Akutan and Amukta Passes."—(53rd Congress, 3rd Session Senate, Executive Document Number 67, page 433.)

34. Damages are therefore claimed by reason of the seizure for the successful purpose of preventing the "Favourite" from engaging in a lawful pursuit of hunting for seals in a proper season and in proper waters.

35. The said seizure was illegal and without reasonable cause, and was without any justification whatsoever, and inasmuch as by reason thereof the voyage of the said Schooner was broken up, compensation is claimed for the damage caused thereby, based upon a reasonable estimate of the sums which the owners would have received as the proceeds of the voyage if it had been completed,

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together with interest thereon, which amounts, they estimate, as follows:

Estimated catch for season had the Schooner not been molested .....	3589 skins
Less skins on board when seized.....	1345 skins
	<hr/>
	2244 skins
2244 skins @ \$8.62 .....	\$19,443.28
Interest from November 30th, 1894 (date of sales in London), to date of payment at 7% .....	

36. In the alternative the above amount of \$19,443.28 is claimed by reason of the loss of time, wages, provisions and outfit for the remainder of the season after the 24th of August, 1894, the date when the vessel was seized and sent to Unalaska; the said expenses being thrown away and damages incurred through the compulsory breaking up of the voyage which the owner was entitled to prosecute according to his original lawful design.

37. His Majesty's Government therefore claims on behalf of Laughlin McLean the sum of \$19,443.28, with interest from November 30th, 1894, at the rate of seven per cent. to the time of payment.

38. It is submitted that the claim for the loss and probable catch or loss of estimated catch is a proper claim under the circumstances.

39. It is submitted that where there is interference with a business, it is followed by liability for the probable consequence.

40. It is also submitted that the uncertainty of being able to state how many seals the vessel would have caught during the balance of the sealing season is no sufficient answer to the claim. Damages for the loss of catch are the necessary and proximate result of the injury, as in the cases of tort at common law. It is sufficient to establish the amount with substantial certainty.

41. Here "the necessary and proximate result of the injury" may be established "with substantial certainty" by having regard to the nature of the season, the equipment of the vessel, the catch of other seasons, the catch of similar vessels in the same season, and otherwise.

42. The following authorities are referred to:

"Compensation may be recovered for proximate losses as are also the natural result of the wrongful act, either in the nature of things, or in the light of special circumstances of which the wrongdoer had notice."—Sedgwick on Damages, 8th Ed., s. 122, at p. 177.

"In order to be compensated a consequential injury must be such a result of this injury as, according to common experience and the usual course of events, might reasonably have been anticipated."

Ibid s.s. 142. See also s.s. 170, 172, 177, 182.

Ibid s.s. 170, 172, 174, 177, 182.

See also Sutherland on Damages.

Profits of special contract:—

"The liability for the profits which would have resulted from the performance of a contract is co-extensive with the power to contract; and the government is liable therefor to the same extent as an individual. The right of a party to recover the profits he would have made in fulfilling a contract depends solely upon the fault of the other party to it, and plaintiff's ability to show that the profits claimed were reasonably certain to have been realized but for the wrongful act complained of. It is not an insuperable objection to their recovery that they cannot be directly and absolutely proved. The general uncertainty attending human life and the special contingencies as to its duration on account of the physical condition of an individual whose rights are involved, do not prevent the recovery of damages for causing his death or injuring his person. An agreement by one person to support another during life is an entire continuing contract, upon the total breach of which the obligor is liable for full and final damages estimated to the time the person who was to be supported would probably die. It is the constant practice to so assess damages in actions to recover for personal injuries. In the nature of things, where performance has been prevented, the proof of profits cannot be direct and absolute. The injured party must, however, introduce evidence legally tending to establish damage and sufficient to warrant a jury in coming to the conclusion that the damages they find have been sustained; but no greater degree of certainty in this proof is required than of any other fact which is essential to be established in a civil action. If there is no more certain method of arriving at the amount, the injured party is entitled to submit to the jury the particular facts which have transpired and to show the whole situation, which is



the foundation of the claim and expectation of profit, so far as any detail offered has a legal tendency to support such claim."

Sutherland on Damages, Vol. 1, p. 141.

**Tortious Interference with Business.**—"In action for torts, injurious to business, the extent of the loss is provable by the same testimony, and recovery may be had for such as is proved with reasonable certainty; it is enough to show what the profits would probably have been. Certainty is very desirable in estimating damages in all cases; and where, from the nature and circumstances of the case, a rule can be discovered by which adequate compensation can be accurately measured, it should be applied to actions of tort, as well as to those upon contract. The law, however, does not require impossibilities, and cannot, therefore, demand a higher degree of certainty than the nature of the case admits. If a regular and established business is wrongfully interrupted, the damage thereto can be shown by proving usual profits, for a reasonable time anterior to the wrong complained of. But it is otherwise where the business is subject to the contingencies of weather, breakages, delays, etc. There is no good reason for requiring any higher degree of certainty in respect to the amount of damages than in respect to any other branch of the cause. Juries are allowed to act upon probable and inferential as well as direct and positive proof. And when from the nature of the case the amount of the damages cannot be estimated with certainty, or only a part of them can be so estimated, no objection is perceived to placing before the jury all the facts and circumstances of the case having any tendency to show damages, or their probable amount, so as to enable them to make the most intelligible and accurate estimate which the nature of the case will permit. This should, of course, be done with such instructions and advice from the court as the circumstances may require, and as may tend to prevent the allowance of such damages as may be merely possible, or too remote, or fanciful in their character to be safely considered as the result of the injury."

*Ibid*, s. 70.

Again: "The fact that the value of a contract, or the advantage to be derived from it, is contingent—that is, that the expected advantage depends on the concurrence of circumstances subsequently to transpire, and which may by possibility not happen, is not an insuperable objection to recovering of damages from such a loss. The chance, so to speak, of obtaining that advantage by performance of the contract, and the conjunction of the necessary



subsequent facts, may be valuable. The nature of the contingency must be considered. If it is purely conjectural, and cannot be reasonably anticipated to happen in the usual course of things, it is too uncertain. There must be proof legally tending to show and sufficient to satisfy the jury that it would happen. The chance that a father would pay a son's debt to procure his release from custody, has been held capable of estimation."

*Ibid*, s. 72.

The "*Risoluta*": In this case a French fishing brig of 142 tons, employed in the cod fishery off the Banks of Newfoundland, came in collision on the 6th of July, 1881, with an Italian barque, and in consequence of the collision was compelled to put into port for repairs, but her repairs having been completed, returned to the fishing ground before the close of the fishing season. In an action of damages instituted on behalf of the owners of the brig against the barque, the Court pronounced the barque solely to blame for the collision and referred the question of damages to the Registrar and merchants.

In giving his judgment on this reference, the Registrar said:

"A sum of 22,000 francs was allowed for loss of fishing. The vessel had a crew of twenty men and eight small boats, it being the practice for the boats, with two men in each and long lines, to surround the vessel whilst fishing. An immense number of French as well as native and somewhat smaller vessels, are engaged in the trade, some of them landing their fish from time to time, and others, including the '*Emma*,' taking everything they catch to Bordeaux, receiving a bounty for so doing from the French Government. The cod fishery opens late in April and ends in November. The '*Emma*' had left Dieppe as usual about the middle of March, with the necessary salt to preserve the fish to be caught by her, going straight to St. Pierre, to procure herrings as bait for the early fishing, and afterwards having damaged her windlass she had returned to St. Pierre, and having got a supply of bait for the later fishing, had only just resumed fishing when the collision in question occurred. At the close of the season she proceeded to Bordeaux and landed and sold 36,474 cod, which realized 37,855 francs. It was proved that the average number of fish caught by other vessels in those seas greatly exceeded that quantity, and that unless that was the case, the proceeds would not cover the expenses. The Registrar and merchants, therefore, came to the conclusion on the information furnished, especially by the defendants, that 22,000 francs

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should be allowed as the loss sustained by the interruption to the fishing occasioned by the collision, an allowance for demurrage in the usual way being inapplicable to this case."

This report was affirmed by the Court.

Sir Robert Phillimore, in giving judgment, said:

"I do not think I need further trouble the counsel for the plaintiffs. Looking to all the circumstances of this case, and to those authorities which have been referred to, and to others which exist and might have been cited in favor of the plaintiffs, and having read Mr. Cookell's notes on the case, I am of opinion that I ought not to interfere with the report of the Registrar, and I therefore dismiss the motion with costs."

Ibid, p. 112.

See also the "Gleaner," *Aspinall's Maritime Cases*, vol. 3, N. S. 582; also the "Argentino," 14 Ap. Ca., p. 519; also *Phillips vs. London and Northwestern Railway Co.*, 5 C. P. D. 280.

In the Bay Fortune cases the United States claimed against the British Government damages, the great bulk of which consisted of probable catch for the year in which the interruption took place, although the interruptions extended only over a period of one day.

State Papers, 1880, LXXVIII., Nos. 7 and 8.

The claims were settled by the payment of a lump sum amounting to about two-thirds of the sum claimed, and implying the consent of both nations to the principle involved in the claim for catch.

State Papers, 1881, Vol. 98, p. 74-78.

By an agreement concluded at St. Petersburg, August 26th to September 8th, 1900, claims for indemnity growing out of the seizures by the Russian cruisers were submitted to Mr. T. M. C. Asser, member of the Council of State of the Netherlands. It was stipulated that the judgment in each case should be governed by the general principles of the law of nations and the spirit of international agreements applicable to the matter. With reference to this stipulation, the arbitrator observed that it was conceded that it should have no retro-active force, and that he should apply to the cases only the principles of the law of nations and the international treaties which were in force and obligatory on the parties at the time of the seizures.

The arbitrator found that the "Cape Horn Pigeon," a whaling bark, having sailed from San Francisco, December 7, 1891, with a

crew of thirty persons, under the command of a captain named Scullan, was, on September 10, 1892, while engaged in fishing for whales in the Sea of Okhotsk, on the high seas, seized by a Russian cruiser and taken to Vladivostock, where she was detained till October 1, 1902. In this case it was admitted that the commander of the Russian cruiser had been in error in his suspicions that the bark was engaged in an illicit pursuit, and the Russian Government offered to pay a proper indemnity, so that the duty of the arbitrator in this case was confined to fixing the amount. He awarded \$38,750, with interest at six per cent. from September 9, 1892, till the day of payment. The award included an allowance not only for damage actually suffered, but also for loss of the profits which would have been made in the natural course of things.

Moore on International Law, Vol. 1, pp. 927-928.

It is submitted that the indemnity should comprise interest calculated at the rate current in British Columbia, on the whole amount of the loss or damage from the time such damage was suffered.

In support of this proposition, the language of the Counsel for the United States before the arbitration at Geneva may be again adopted:—

"The case of the United States desires the tribunal to award a sum in gross in reparation of the losses complained of; and the counsel request this, assuming the tribunal shall be fully satisfied that the said losses are properly proved in detail, and that the sum total thereof, as claimed, is due by Great Britain.

"In that contingency the counsel assume that interest will be awarded by the tribunal as an element of the damage. We conceive this to be conformable to public law, and to be required by paramount considerations of equity and justice.

"Numerous examples of this occur in matters of international valuation and indemnity.

"Thus, on a recent occasion, in the disposition by Sir Edward Thornton, British Minister at Washington, as umpire, of a claim on the part of the United States against Brazil, the umpire decided that the claimants were entitled to interest by the same right which entitled them to reparation. And the interest allowed in this case was \$45,077, nearly half of the entire award (\$100,740).

"So in the case of an award for damages by the Emperor of Russia in a claim of the United States against Great Britain, under the treaty of Ghent, additional damages were awarded in the nature

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of damages (interest?) from the time when the indemnity was due. In that case Mr. Wirt holds that, according to the usage of nations, interest is due on international transactions.

"In like manner Sir John Nicholl, British Commissioner in the adjustment of damages between the United States and Great Britain under the Jay Treaty, awards interest, and says:

"To reimburse to claimants the original cost of their property, and all the expenses they have actually incurred, together with interest on the whole amount, would, I think, be a just and adequate compensation. This, I believe, is the measure of compensation usually made by all belligerent nations for losses, costs, and damages occasioned by illegal capture."

The argument at Geneva, p. 220.

The arbitrators at Geneva, on the reasoning quoted above, decided "that it was just and reasonable that interest should be allowed at a reasonable rate."

In the opinion of United States Attorney General Wirt, referred to in the above extracted argument, the following language is used:—

"First, in interest a part of the indemnity awarded by the Emperor . . ."

And a little further down on the same page.—

"After the most deliberate consideration of all the arguments which have been urged pro and con, I am clearly of the opinion that interest at least is a necessary part of the indemnity awarded by the Emperor."

Opinions of Attorney General, Vol. 2, p. 29.

In the case of *Ekins vs. East India Company*, it was decided that interest should be allowed for a snip's cargo taken by the defendant; and this being done in the Indies, Indian interest was allowed (about 12 per cent.), deducting the charge of return from the Indies.

It was objected:

1. That the value of the ship and cargo being uncertain, it could not, in the nature of it, carry interest, but from the time it was ascertained by the jury.

Peere William's Reports, Vol. 1, pages 395-6.

2. That the plaintiff had, at this time, rested thirteen years upon his own bill, and therefore to allow him Indian interest would be to make him a gainer by his own delay.

But the Court decided:

"If a man has my money by way of loan, he ought to answer interest; but if he detains my money from me wrongfully, he ought, fortiori, to answer interest. And it is still stronger where one by wrong takes from me either my money or my goods which I am bringing with, in order to turn them into money.

"Therefore, let the defendants pay interest; and this being transacted in the Indies, where the person who acted by authority under them, and for their use, must be presumed to have made the common advantage that money yields there, the company must answer the interest of that country."

This case was affirmed on appeal to the House of Lords. Referring to interest, Mr. Davies in his introduction to his notes on treaties, says:

"According to the usage of nations, it is a necessary part of a just national indemnification."

2, Brown's Parliamentary Cases, p. 382.

Intro. Note J. C. B. Davies, Notes on Treaties, page 20.

And see *Law vs. East India Co.*, 4 Ves. 824.

And *Heathcote vs. Hulme*, 1819, 1 Jac. & W., 122 at 124.

Reference is also made to the case of the "Costa Rica Packet."

Papers presented to both Houses of Parliament by command of Her Britannic Majesty, May, 1897, "Commercial No. 3, 1897."

Applying to the present case the principle underlying the above quoted authorities, that interest is due as an element of indemnity, it follows that such interest must be calculated at the current rate at the place where the injury was committed to make the indemnity complete.

The principle is the more applicable in cases where private individuals have been injured by a nation, they having no means of pressing their claims.

"A."

This is the Exhibit marked "A" referred to in the declaration of James Hill Lawson, declared before me this 28th day of December, 1912.

A. G. S. HEISTERMAN,

Notary Public in and for the Province of British Columbia.

18 STATEMENT OF CASE ON BEHALF OF THE SCHOONER "FAVOURITE"

(Copy.)

SCHOONER "FAVOURITE"

In Account With

R. P. RITHET & CO., LTD.

On account of 10 casks, 618 seal skins shipped to  
Culverwell, Brooks & Co., 29th Sept., 1894.

DR.

To advance @ \$6.00 per skin.....	\$3,708.00	....
" Interest on advance, 68 days @ 5%.....	32.45	
" Commission on Net Proceeds and sales @ 1½% .....	79.38	
" Balance .....	1,472.09	
	<u>\$5,291.92</u>	

CR.

By Net Proceeds and Sales, per copy herewith, £1,091.19.3 484 5-8 .....	\$5,291.92
By Balance due Schr. "Favourite," 18th Dec., 1894 .....	\$1,472.09

E. & O. E.

Victoria, B. C.,  
4th Dec., 1894,

R. P. RITHET & CO., LTD.  
R. Seabrook, Vice-Pres.

(Copy.)

SCHOONER "FAVOURITE"

In Account With

R. P. RITHET & CO., LTD.

On account of 10 casks, 627 seal skins, shipped to  
C. M. Lampson & Co., 29th Sept., 1894.

DR.

To Advance at \$6.00 per skin.....	\$3,762.00	
" Interest on advance, 62 days, 5%.....	32.92	
" Commission on Net Proceeds, 1½%.....	81.85	
" Balance .....	1,580.43	
	<u>\$5,457.20</u>	

CR.

By Net Proceeds and Sales, per copy herewith, £1,126.1.4 4.84 5-8 .....	\$5,457.20
By Balance due Schooner, 18th Dec., 1894.....	\$1,580.43

E. & O. E.

Victoria, B. C.,  
31st Dec., 1894.

R. P. RITHET & CO., LTD.  
J. H. Lawson, for Vice-Pres.



Victoria, British Columbia, November 7th, 1894.

IN THE MATTER of the seizure and detention  
of the British Schooner "Favourite."

I, Laughlin McLean, of the City of Victoria, in the Province of British Columbia, Master Mariner, do solemnly and sincerely declare as follows:—

THAT I am master and owner of the British sealing schooner "Favourite."

And that I do hereby enter claim against the British Government for compensation for unlawful seizure in Behring Sea, while pursuing the occupation of seal-hunting, complying in every respect with the law.

That I procured from the Collector of Customs at Victoria, B. C., flag, clearance and license for permission to hunt fur seals in Behring Sea, and did sail from Victoria, B. C., on the Eighteenth day of June, 1894.

That I had aboard no firearms except one rocket signal gun for signaling purposes, which appeared on manifest signed by the Collector of Customs.

That I proceeded to Kyuquot on the west coast of Vancouver Island, arriving there the twenty-first day of June, 1894, and after procuring a crew of Indian hunters for the cruise, and having all spears sealed up by H. M. Customs Officer, I sailed from said port on the fourth day of July, 1894, bound direct for Behring Sea.

That I arrived off Akoun Island at the entrance to Behring Sea, on the 28th day of July, 1894, and anchored in a bay off said island.

That early in the morning of the first of August, I entered Behring Sea, and after breaking seals, commenced sealing at 10 a.m.

That I continued cruising around and sealing as weather permitted, from Lat. 54.30 to 55 north, Long. 166 to 168.30 west, and that on the twenty-fourth day of August, 1894, in Long. 168.30, Lat. 54.27, I was spoken and boarded by the boarding officer of the U. S. S. "Mohican."

That while said officer was examining the schooner's papers, I placed on the table beside him the signal gun; after examining my papers, etc., he expressed himself as satisfied with everything;

he then wrote the following in the official log and signed his name to same:

"Boarded the 'Favourite.' Found log correctly kept; no violation of regulations, as per log; one shot gun unsealed.

"(Sgd.) THOS. J. SENN,  
Boarding Officer."

He then left the schooner and returned to the "Mohican." I immediately ordered all the canoes out hunting; the "Mohican" steamed off about two miles, she then rounded to and returned and the same officer again boarded me, ordered me to call in all my canoes, take all schooner's papers and signal gun and come aboard "Mohican." The captain then informed me he would have to seize me for having firearms aboard, referring to the signal gun. I protested that the signal gun was only carried and used for firing dockets as night signals to the canoes; that said gun was unfit for killing seals, it being an old gun barely eleven inches long in the barrels, with a pistol handle grip of nine inches; that I had no cartridges of any description, nor shot of any kind aboard; and that it was utterly impossible for me or any one else to use it as a weapon for killing seals; that it was clearly mentioned on the manifest signed by the Collector of Customs at Victoria, B. C., and that if it was a contravention of the law for me to have said gun aboard, that officer would have so informed me before I sailed. My protest was of no avail; the captain of the "Mohican" sent me aboard the schooner with an officer and three men, with instructions to proceed direct to Unalaska, and report to H. M. S. "Pheasant." We arrived there on August the twenty-seventh, and immediately boarded the "Pheasant" and interviewed the captain, who after examining my papers and the signal gun, handed them back to me and ordered me to Victoria to report to the Collector of Customs. I arrived in Victoria on the fifteenth of September, 1894, and reported to the Collector of Customs, who refused to take any action in the matter. The signal gun, together with a letter from the captain of H. M. S. "Pheasant," explaining the case, was sent to Rear Admiral H. F. Stephenson, Commander in Chief of H. M. S. "Royal Arthur." A reply was shortly returned from the Admiral, ordering the release of the schooner.

That in consequence of this unlawful seizure and the loss of balance of sealing season of 1894, I do hereby claim the sum of Twenty-three thousand four hundred and thirty dollars (\$23,430.00) arrived at as follows:

STATEMENT OF CASE ON BEHALF OF THE SCHOONER "FAVOURITE" 21

That on the day of seizure I had twelve hundred and forty-seven skins (that being the highest catch of any schooner at that date). That the schooner "Triumph" was spoken the same day with nine hundred and eighty-two skins, and that she eventually got a total catch of thirty-two hundred and twelve skins in Behring Sea, and that as I had nineteen canoes to her seventeen, and a crew of hunters equally as good, I would have, if unmolested, secured a catch of at least thirty-five hundred and eighty-nine, for which number, less the twelve hundred and forty-seven already secured, I now make claim, viz.:

2,343 Seal Skins, at \$10.00.....\$23,430.00

I make this solemn declaration conscientiously, believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the "Canada Evidence Act, 1893."

LAUGHLIN McLEAN.

DOMINION OF CANADA,  
PROVINCE OF BRITISH COLUMBIA. }  
VANCOUVER.

TO WIT.

IN THE MATTER of the Pecuniary Claims Commission  
and the Memorial of His Britannic Majesty's Government  
in support of the claim in respect to the "Favourite."

I, LAUGHLIN McLEAN, formerly of Victoria, in the Province  
of British Columbia, now of Tonopah, in the State of Nevada, one  
of the United States of America, do solemnly and sincerely declare  
as follows:—

1. I have read over the Claim herein, and I am the Laughlin  
McLean referred to therein, and am familiar with the facts therein  
stated, and I say that the same so far as they relate to any acts of  
mine or to occasions on which it is stated I was present, the same  
are true, and so far as other facts are concerned they are true to  
the best of my information and belief.

2. The facts stated by me in a Notarial Declaration annexed  
to the Claim herein and made by me on the 7th November, 1894,  
are true.

3. I am at present living at Tonopah aforesaid, but I am and  
always have been a British subject, and I have not signed any  
declaration of intention to become a citizen of the United States,  
though I left British Columbia in the year 1906.

DECLARED before me at Tonopah, }  
in the State of Nevada, this }  
seventh day of December, A. D. }  
1912.

LAUGHLIN McLEAN.

J. T. GARNER,

A Notary Public for the State of Nevada.

(SEAL)

DOMINION OF CANADA,  
PROVINCE OF BRITISH COLUMBIA. }

TO WIT:

IN THE MATTER of the Pecuniary Claims, Commission  
and the Memorial of His Britannic Majesty's Government  
in support of the claim in respect to the "Favourite."

I, JAMES HILL LAWSON, of the City of Victoria, in the  
Province of British Columbia, do solemnly and sincerely declare as  
follows:—

1. I have read over the Memorial of His Britannic Majesty's  
Government in support of the claim of the "Favourite," now pro-  
duced and marked as Exhibit "A" to this, my declaration.

2. I say that the facts stated in regard to the registration of  
the "Favourite" in paragraph one of said Memorial are true, and  
I believe Laughlin McLean, therein referred to, was always a Brit-  
ish subject.

3. The facts stated in Paragraphs 2 to 9, inclusive, of said  
Memorial are true in substance and in fact.

4. The statement in Paragraph 10 of said Memorial is true,  
as I am informed and do verily believe. The source of my informa-  
tion is as follows: The said ship's original Articles for the said  
voyage.

5. The facts stated in Paragraphs 22, 24, 26 and 27 of said  
Memorial are true.

AND I make this solemn declaration conscientiously, believing  
it to be true, and knowing that it is of the same force and effect  
as if made under oath and by virtue of the "Canada Evidence Act."

DECLARED before me at the City  
of Victoria, in the Province of  
British Columbia, this 28th day of  
December, A. D. 1912. }

J. H. LAWSON.

H. G. S. HEISTERMAN,

A Notary Public in and for the Province of British Columbia.

(SEAL)

DOMINION OF CANADA,  
PROVINCE OF BRITISH COLUMBIA. }

TO WIT:

IN THE MATTER of the Pecuniary Claims Commission  
and the Memorial of His Britannic Majesty's Government  
in support of the claim in respect of the "Favourite."

I, JOHN J. WHITELEY, Master Mariner, of St. Johns, Newfoundland, at present residing in the City of Victoria, British Columbia, do solemnly declare and say as follows:—

1. I formerly resided in the said City of Victoria, and was engaged in the fur-seal business for eight years, sailing out of said port in the capacity of captain.

2. In the year 1894, I was captain of the British sealing schooner "Labrador," a vessel of 25 tons register, and in the month of July, 1894, left the Port of Victoria, in command of the said schooner, with a crew of five white men and 14 Indians, and equipped with one boat and seven canoes, on a sealing voyage to Behring Sea.

3. I entered Behring Sea on or about the first day of August, 1894, and hunted seals in said sea in the vicinity of Latitude 55 degrees 30 minutes North, Longitude 160 degrees West, until the 19th day of August, 1894, when I met with bad weather and lost all my canoes, after which I was forced to abandon the voyage, which I did by leaving Behring Sea on the following day, that is to say, the 20th day of August, 1894, and arriving back at the Port of Victoria on or about the 10th day of September, 1894. While in the Behring Sea, as aforesaid, we took 179 male fur seals and 381 female seals, making a total catch of 560.

AND I MAKE this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the "Canada Evidence Act."

DECLARED before me at the City  
of Victoria, in the Province of  
British Columbia, this 28 day of  
December, A.D. 1912. }

JOHN J. WHITELEY,

(Sgd) CHARLES E. WILSON.

A Notary Public within and for the Province of British Columbia.

(Notarial Seal)



DOMINION OF CANADA,  
PROVINCE OF BRITISH COLUMBIA. }

TO-WIT:

IN THE MATTER of the Pecuniary Claims Commission  
and the Memorial of His Britannic Majesty's Government  
in Support of the Claim in Respect of the "Favourite."

I, DANIEL G. MACAULAY, master mariner, of the City of  
Victoria, in the Province of British Columbia, do solemnly declare  
and say as follows:—

1. In the year 1894 I was captain on the British sealing  
schooner "Beatrice," a vessel of 66 tons register, and on the 20th  
day of June, 1894, I cleared from the Port of Victoria, British Col-  
umbia, in command of the said schooner, bound for the Behring Sea,  
on a fur seal hunting expedition with a crew of 5 white men and 22  
Indians and equipped with one boat and 11 canoes.

2. I entered Behring Sea towards the end of the month of  
July and started sealing on the first day of August, 1894, about 65  
to 80 miles off the Pribilof Islands, where I continued to hunt  
during the months of August and September, returning to the said  
Port of Victoria, in the month of October, 1894. While in the  
Behring Sea, as aforesaid, we took 342 male fur seal skins, and 818  
female seal skins, making the total catch of 1,160 skins.

AND I MAKE this solemn declaration conscientiously believ-  
ing it to be true and knowing that it is of the same force and effect  
as if made under oath and by virtue of the "Canada Evidence Act."

DECLARED before me at the City  
of Victoria, in the Province of  
British Columbia, this 10th day of  
January, A.D. 1913.

DANIEL G. MACAULAY.

(Sgd) CHARLES E. WILSON,

A Notary Public within and for the Province of British Columbia.

(Notarial Seal)

DOMINION OF CANADA,  
PROVINCE OF BRITISH COLUMBIA. }

TO-WIT:

IN THE MATTER of the Pecuniary Claims Commission  
and the Memorial of His Britannic Majesty's Government  
in Support of the Claim in Respect of the "Favourite."

I, ISAAC A. GOULD, master mariner, of the City of Victoria, in  
the Province of British Columbia, do solemnly declare and say as  
follows:—

1. In the year 1894, I was captain of the British sealing  
schooner "Katherine," a vessel of 82 tons register, and in the month  
of June, 1894, I cleared from the Port of Victoria, British Columbia,  
in command of the said schooner, bound for the Behring Sea, on a  
fur seal hunting expedition, with a crew of six white men and 26  
Indians, and equipped with one boat and 13 canoes.

2. I entered Behring Sea towards the end of the month of  
July, 1894, and started sealing on the first day of August, about  
eighty to one hundred miles from the Pribolof Islands, where I con-  
tinued to hunt during the months of August and September, return-  
ing to the said Port of Victoria in the month of October, 1894.  
While in the Behring Sea, as aforesaid, we took 490 males fur seal  
skins, and 569 female fur seal skins, making a total catch of 1,059  
skins.

AND I MAKE this solemn declaration conscientiously believing  
it to be true and knowing that it is of the same force and effect as  
if made under oath and by virtue of the "Canada Evidence Act."

DECLARED before me at the City  
of Victoria, in the Province of  
British Columbia, this 13th day of  
January, 1913.

ISAAC A. GOULD.

(Sgd) CHARLES E. WILSON,

A Notary Public within and for the Province of British Columbia.

(Notarial Seal)

DOMINION OF CANADA,  
PROVINCE OF BRITISH COLUMBIA. }

TO-WIT:

IN THE MATTER of the Pecuniary Claims Commission  
and the Memorial of His Britannic Majesty's Government  
in Support of the Claim in Respect of the "Favourite."

I, VICTOR JACOBSON, master mariner, of the City of Victoria, in the Province of British Columbia, do solemnly declare and say as follows:—

1. In the year 1894 I was captain of the British sealing schooner "Minnie," a vessel of 46 tons register, and on or about the 15th day of June, 1894, I cleared from the port of Victoria, British Columbia, in command of the said schooner bound for Behring Sea on a fur seal hunting expedition with a crew of six white men and twenty Indians and equipped with two boats and ten canoes.

2. I entered Behring Sea towards the end of the month of July, 1894, and started sealing on the 1st of August, about 40 miles north of the Aleutian Islands in the vicinity of which I continued to hunt the whole month of August and up to the 18th day of September, when I went for Dutch Harbour, Unalaska, to obtain water previously to my return to Victoria, where I arrived in the month of October, 1894. When I commenced sealing on the 1st day of August I was unfortunate in losing one canoe and two Indians in the fog, which canoe and Indians were picked up by the schooner "Favourite" and were never returned to the schooner "Minnie."

3. While in the Behring Sea as aforesaid we took 679 male fur seal skins and 986 female fur seal skins making a total catch of 1665 skins.

AND I MAKE this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the "Canada Evidence Act."

DECLARED before me at the City  
of Victoria, in the Province of  
British Columbia, this 24th day of  
January, 1913. }

VICTOR JACOBSON.

(Sgd.) CHARLES E. WILSON,

A Notary Public within and for the Province of British Columbia.

(Notarial Seal)

DOMINION OF CANADA,  
PROVINCE OF BRITISH COLUMBIA. }

TO-WIT:

IN THE MATTER of the Pecuniary Claims Commission  
and the Memorial of His Britannic Majesty's Government  
in Support of the Claim in Respect of the "Favourite."

I, SPROTT BALCOM, master mariner, of the City of Victoria,  
in the Province of British Columbia, do solemnly declare and say  
as follows:—

1. In the year 1894 I was captain of the British sealing  
schooner "Walter L. Rich," a vessel of 76 tons register, and on or  
about the 15th day of March, 1894, I cleared from the Port of Vic-  
toria, British Columbia, in command of the said schooner, bound for  
the Pacific Coast and Behring Sea, on a fur seal hunting expedi-  
tion, with a crew of 9 white men and 25 Indians, and equipped with  
two boats and thirteen canoes.

2. We hunted seals along the Pacific Coast until the latter part  
of April, 1894, when I took the vessel to Sand Point, Alaska, to  
await the opening of the sealing season in Behring Sea.

3. I entered Behring Sea towards the end of the month of  
July, 1894, and started sealing on the first day of August, in the  
vicinity of Latitude 55° North and Longitude 170° West, where I  
continued to hunt during the months of August and September,  
returning to the said Port of Victoria in the month of October,  
1894. While in the Behring Sea, as aforesaid, we took 1000 male  
fur seal skins and 749 female fur seal skins, making a total catch  
of 1749 skins.

AND I MAKE this solemn declaration conscientiously believing  
it to be true and knowing that it is of the same force and effect as  
if made under oath and by virtue of the "Canada Evidence Act."

DECLARED before me at the City  
of Victoria, in the Province of  
British Columbia, this 22nd day of  
January, 1913. }

SPROTT BALCOM.

(Sgd.) CHARLES E. WILSON,

A Notary Public within and for the Province of British Columbia.

(Notarial Seal)